



Federal Financial Analytics, Inc.

ACTING, SCHMACTING: How Acting Agency Heads Redefine U.S. Finance

Although President Biden has been unusually slow naming permanent officials to key financial-regulatory agencies, even those with only acting status are making fundamental, lasting changes to the banking construct.

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Typically, acting agency heads are caretakers, keeping the lights on with as little offense to anyone as possible until acting becomes confirmed and real change to suit the new president begins in earnest. However, battles between centrist and progressive Democrats complicate not only high-profile appointments such as Jay Powell's to a second term, but also naming lower-level officials at agencies such as the Consumer Financial Protection Bureau (CFPB), Federal Housing Finance Agency (FHFA), and Office of the Comptroller of the Currency (OCC). As a result, acting heads at these agencies aren't officials-in-waiting; they're officials in high gear making major change no permanent Biden appointee will do anything but finalize in still tougher form.

A few recent and important cases in point:

- In a sweeping proposal, the CFPB demands disclosures from small-business lenders to ensure that this sector has at least as much racial, ethnic, and gender equity as the Home Mortgage Disclosure Act (HMDA) demands in mortgage finance. FedFin's [in-depth analysis](#) lays out not just the proposal's complex compliance and data-management requirements along with the legal and reputational risks which banks and nonbanks alike would absorb. We also show how demands for loan-amount and pricing data could both alter credit availability and undermine market discipline and fair-lending enforcement.
- No matter HMDA, the new acting FHFA head wants a lot more equity and she wants it now. As a result, the agency has implemented a tough new [anti-discrimination policy](#) for Fannie, Freddie, and the Home Loan Banks. Going farther, FHFA has also proposed a new approach to the GSEs' [affordable-housing goals](#) and a new, [equitable-finance mission](#) for Fannie and Freddie. As we've noted in our in-depth reports, these policies may be nominally proposals, but FHFA plans to put permanent rules in place well ahead of 2022, making the U.S. housing-finance system very different very soon.
- Despite the scope of these and other changes under way for consumer and housing finance, perhaps no policy area is getting as much of a rewrite as cryptoassets and digital-finance delivery. Acting Comptroller Hsu has made it [very clear](#) that he's following the footsteps of his predecessor only in making big decisions about who gets a banking charter how. The Trump Administration's acting comptroller, Brian Brooks, broke the barriers between traditional, fintech, and crypto charters in many ways. As recent

FedFin analyses show, Mr. Hsu is putting them back even as SEC Chairman Gensler builds a bunch of new ones. There will be crypto banks and banks will be able to offer crypto services, but only on terms and conditions far closer to the safety-and-soundness and consumer-protection standards the [banking agencies](#) have begun to implement not just for banks, but also for anyone with which a bank does business.

And, these consequential actions from acting agency heads only scratch the surface of change that is well under way, and may not just ramp up, but also change direction based on critical Fed appointments in coming weeks. The most strategic of these decisions affect M&A as detailed in a FedFin report following President Biden's game-changing [executive order](#) in this important arena. However, the U.S. bank- capital framework is set for a rewrite, the rules governing the Community Reinvestment Act are already in mid-overhaul, and inter-agency efforts will soon launch U.S. policy on MMFs, stablecoins, and the use of artificial intelligence across the spectrum of financial products. We'll be providing clients with in-depth and strategic advice on all these issues in coming weeks as well as on the Fed's continuing work to design a U.S. central bank digital currency and figure out who gets access to the payment system.

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